

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SUNRISE DENTAL SOLUTIONS, LLC, a
Washington limited liability company, and
KHURANA & GHORBANIAN V, PLLC, d/b/a
SUNRISE DENTAL, a Washington professional
limited liability company,

Plaintiffs,

v.

SUNRISE DENTAL LLC, f/k/a SUNRISE
DENTAL PLLC, a Washington limited liability
company; PAUL H. BARTON, DDS, PLLC, a
Washington professional limited liability
company; and PAUL H. BARTON, DDS, an
individual,

Defendants.

No. _____

COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION

Jury Trial Demanded

Plaintiffs, for their complaint against defendants, state and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Sunrise Dental Solutions, LLC is a Washington limited liability
company having its principal place of business in King County, Washington.

2. Plaintiff Khurana & Ghorbanian V, PLLC, d/b/a Sunrise Dental (hereafter "Sunrise Dental of Pasco") is a Washington professional limited liability company having its principal place of business in Pasco, Benton County, Washington.

3. Defendant Sunrise Dental LLC is a Washington limited liability company, formerly known as "Sunrise Dental, PLLC." Plaintiffs are informed and believe, and thereon allege, that Sunrise Dental LLC has its principal place of business in Benton County, Washington.

4. Defendant Paul H. Barton, DDS, PLLC, is a Washington professional limited liability company which was formed September 28, 2010. Plaintiffs are informed and believe, and thereon allege, that Defendant Paul H. Barton, DDS, PLLC has, since September 28, 2010, engaged in the practice of dentistry in Benton County, Washington.

5. Defendant Paul H. Barton, DDS ("Barton") is an individual residing within Benton County, Washington. Barton is the sole member of both Sunrise Dental LLC and Paul H. Barton, DDS, PLLC.

6. This action arises, *inter alia*, under the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*, and under the common law. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, 1367, and 2201.

7. Each Defendant is subject to personal jurisdiction within this district.

8. This district is a proper venue for this action, pursuant to 28 U.S.C. § 1391.

PLAINTIFFS' TRADEMARK RIGHTS

9. Plaintiff Sunrise Dental Solutions LLC ("SDSL") is in the business of owning intellectual property and authorizing rights under intellectual property for the benefit of authorized users. SDSL owns (i) United States Trademark Registration No. 3,886,179 for the mark SUNRISE DENTAL for dentistry services, and (ii) United States Trademark Registration No. 3,727,891, for the design mark SUNRISE DENTAL for dentist services (hereafter the SUNRISE DENTAL Marks).

1 PLLC alleged common law trademark infringement, unfair competition, and violation of
2 Washington's Consumer Protection Act.

3 16. During the course of the still-pending King County action, SDSL notified the
4 Washington Secretary of State that Sunrise Dental PLLC was providing dental services under
5 an unlawful corporate name, in violation of R.C.W. 25.15.045(4). In response, the
6 Washington Secretary of State required Sunrise Dental PLLC and its member, Barton, to
7 discontinue use of the unlawful corporate name in association with dental practice.

8 17. In response to the requirement of the Washington Secretary of State, Barton
9 incorporated a new professional limited liability company, Defendant Paul H. Barton, DDS,
10 PLLC, on or about September 28, 2010. Additionally, on or about October 1, 2010, Barton
11 changed the corporate status of Sunrise Dental PLLC from a professional limited liability
12 company to a limited liability company, under the name of the present defendant, Sunrise
13 Dental LLC.

14 18. Plaintiffs are informed and believe, and thereon allege, that Defendant Sunrise
15 Dental LLC does not provide dental services and has not done so since the change in its status
16 from a professional limited liability company to a limited liability company, on or about
17 October 1, 2010.

18 19. Accordingly, Plaintiffs are informed and believe, and thereon allege, that
19 Defendant Sunrise Dental LLC does not and cannot claim any common law trademark rights
20 for the provision of dental services.

21 20. Furthermore, at all times that Sunrise Dental PLLC was providing dental
22 services, it was doing so under an unlawful corporate name, and therefore did not accrue any
23 trademark rights protectable under the common law by virtue of its unlawful conduct.

24 21. Barton, in his individual capacity, has not accrued any protectable trademark
25 rights under the common law, because of the unlawful conduct of Sunrise Dental PLLC, and
26 by virtue of the fact that Barton, in his individual capacity, is not an entity that provided
27 dental services to the consuming public.

22. To the extent that Defendant Paul H. Barton, DDS, PLLC asserts any claim to common law trademark rights, Plaintiffs have not been informed of any such claim; moreover, no common law rights could inure to the benefit of that entity before the date of its formation, September 28, 2010.

23. Plaintiffs are informed and believe, and thereon allege, that at no time have any of the Defendants registered a trade name with the Washington State Department of Licensing.

24. Plaintiffs are informed and believe, and thereon allege, that since approximately the date of its formation on September 28, 2010, Defendant Paul H. Barton, DDS, PLLC has provided dental services from an office from within the city of Richland, Benton County, Washington, under the trade name "Sunrise Dental;" however, Paul H. Barton, DDS, PLLC has not registered the trade name with the state of Washington.

COUNT 1

(Infringement of Federally Registered Trademark)

25. Plaintiffs repeat and reallege each allegation contained in paragraphs 1–24, inclusive, with the same force and effect as if fully set forth herein.

26. This cause of action arises under Section 32 of the Lanham Act, 15 U.S.C. § 1114, for infringement of federally registered trademarks.

27. Defendants' unauthorized and unlawful use of the unregistered trade name "Sunrise Dental" in commerce within Richland, Washington, in association with the provision of dental services, is likely to cause confusion, mistake, and/or deception as to the origin of dental services provided by Defendants, and the services provided by Plaintiff Sunrise Dental of Pasco, and to mislead consumers into believing that Defendants' services originate with, or are affiliated with, sponsored, authorized, approved, or sanctioned by Plaintiff SDSL.

28. These acts of Defendants constitute infringement of Plaintiffs' rights in the registered SUNRISE DENTAL Marks in violation of Section 32 of the Lanham Act.

37. Plaintiffs are entitled to the Court's declaration that no Defendant can assert any valid, enforceable, or protectable common law trademark rights in the trade name "Sunrise Dental," in connection with the provision of dental services, and that no Defendant can assert superior common law rights in said trade name as a defense to infringement of Plaintiffs' federally registered SUNRISE DENTAL Marks.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray for the following relief:

A. For judgment that the Plaintiffs' SUNRISE DENTAL Marks are valid, enforceable, and infringed by each Defendant that has used the trade name "Sunrise Dental" in connection with dental services;

B. For the Court's Declaratory Judgment that neither Defendant Sunrise Dental LLC, Defendant Paul H. Barton, DDS, PLLC, nor Defendant Barton in his individual capacity can assert any valid, enforceable, or protectable common law rights in the trade name "Sunrise Dental" because of their unlawful conduct in violation of R.C.W. 25.15.045(4);

C. For judgment that all Defendants are liable to Plaintiffs for infringement of federally registered trademarks in violation of 15 U.S.C. § 1114 and for unfair or deceptive acts and practices in the conduct of trade or business in violation of R.C.W. 19.86.020, et. seq.;

D. For judgment that Defendants have engaged in these acts of infringement and unfair competition knowingly, willfully, and in bad faith;

E. For judgment that Defendants, their members, and all persons acting in concert or participation with them be preliminarily and permanently enjoined from directly or indirectly advertising, promoting, offering, or providing dental services under the trade name "Sunrise Dental" or any similar designation or colorable imitation thereof, and from further engaging in any acts of unfair competition; and

1 F. For judgment that Plaintiffs be awarded damages in an amount to proven at
2 trial together with their costs, expert witness fees, attorneys' fees, and such other and further
3 relief as the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to F.R.C.P. 38, Plaintiffs demand trial by jury on all issues so triable.

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7 Dated this 29th day of December, 2010.

8
9 CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

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12 s/ Robert J. Carlson

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